

the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

ANTHONY ROCCA FIORITA ET AL. DOING BUSINESS AS
A. R. FIORITA FRUIT CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (C) OF THE CLAYTON ACT

Docket 8067. Complaint, Aug. 4, 1960—Decision, Dec. 1, 1960

Consent order requiring commission merchants in St. Louis, Mo., to cease receiving illegal brokerage on their own purchases of citrus fruit from Florida packers, such as a discount of 10¢ per 13½ bushel box or equivalent, or a lower price reflecting a commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Anthony Rocca Fiorita, Joseph Rocca Fiorita, and Frank Rocca Fiorita, are individuals and copartners doing business as A. R. Fiorita Fruit Co., under and by virtue of the laws of the State of Missouri, with their offices and principal place of business located at 71 Produce Row, St. Louis, Missouri.

PAR. 2. Respondents, individually and as partners doing business as A. R. Fiorita Co., hereinafter sometimes referred to collectively as respondents, are now, and for the past several years have been, engaged in business primarily as a commission merchant and wholesale distributor buying, selling and distributing citrus fruit and produce, as well as other food products, all of which are hereinafter sometimes referred to as food products. Respondents purchase their food products from a large number of suppliers located in many sections of the United States, particularly in the State of Florida. The annual volume of business done by respondents in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, respondents have purchased and distributed, and are now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Missouri, in which respondents are located. Respondents transport or cause such food products, when purchased, to be transported from the places of business or packing plants of their suppliers located in various other States of the United States to respondents who are located in the State of Missouri, or to respondents' customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondents and their respective suppliers of such products.

PAR. 4. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, respondents have been and are now making substantial purchases of food products for their own account for resale from some, but not all, of their suppliers, and on a large number of these purchases respondents have received and accepted, and are now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondents make substantial purchases of citrus fruit for their own account from a number of packers or suppliers located in the State of Florida, and receive, on said purchases, a

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brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1 $\frac{3}{8}$ bushel box, or equivalent. In many instances respondents receive a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondents in receiving and accepting a brokerage or a commission; or an allowance or discount in lieu thereof, on their own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and Mr. Ernest G. Barnes for the Commission.
Respondents, for themselves.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 4, 1960, charging them with having violated the Clayton Act (15 U.S.C. § 13), as amended, by receiving or accepting commission or brokerage payments in connection with their buying, selling and distribution of citrus fruit and other produce. Respondents entered into an agreement, dated September 29, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner

provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§ 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondents Anthony Rocca Fiorita, Joseph Rocca Fiorita and Frank Rocca Fiorita are copartners trading and doing business as A. R. Fiorita Fruit Co. with their office and principal place of business located at 71 Produce Row, in the City of St. Louis, State of Missouri.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Clayton Act, as amended (15 U.S.C. 13), and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Anthony Rocca Fiorita, Joseph Rocca Fiorita, and Frank Rocca Fiorita, individually and as copartners doing business as A. R. Fiorita Fruit Co., and their agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for respondents' own account, or where respondents are the agents, representatives, or other intermediaries acting for or in behalf, or are subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 1st day

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of December 1960, become the decision of the Commission; and,
accordingly:

It is ordered. That the above-named respondents shall, within